



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 235 and 252

RIN 0750-AI10

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Research and Development Contracting (DFARS Case 2013-D026)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to create an overarching prescription for a research and development-related clause with an alternate. The rule also includes separate prescriptions for the basic and alternate clause and includes the full text of the alternate clause.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Annette Gray, telephone 571-372-6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 73475 on December 6, 2013, to amend the presentation of the DFARS part 235 clause with its alternate and their prescriptions. This final rule addresses the single clause affected, which is 252.235-7003, Frequency Authorization, and its alternate.

One public comment was received; however it was not related to the proposed rule and therefore not considered in drafting the final rule. Minor editorial changes were made to standardize language used in the final rule for the clause prescriptions and prefaces in order to provide uniform arrangement in the regulations.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows.

This final rule amends the Defense Federal Acquisition Regulation Supplement (DFARS) to create prescriptions for the basic version and the alternate of a DFARS part 235 solicitation and contract clause and to include the full text of the alternate clause.

The public did not raise any issues in response to the initial regulatory flexibility analysis. The Chief Counsel for Advocacy of the Small Business Administration did not submit any comments in response to the rule.

Potential offerors, including small businesses, may be affected by this rule by seeing an unfamiliar format for clause alternates in solicitations and contracts issued by DoD contracting activities. According to the Federal Procurement Data System, in fiscal year 2012, DoD made approximately 270,000 contract awards (not including modification and orders) that exceeded the micro-purchase threshold, of which approximately 180,000 (67%) were awarded to small businesses. It is unknown

how many of these contracts were awarded that included an alternate to a DFARS provision or clause.

Nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in the solicitations and contracts will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new format of the clause alternates in full text contained in contracts issued by any DoD contracting activity. The rule also anticipates saving contractors time by making all paragraph substitutions from the basic version of the clause, and not requiring the contractors to read inapplicable paragraphs contained in the basic version of the clause. The overall burden caused by this rule is expected to be negligible and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. No alternatives were identified that will accomplish the objectives of the rule.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of

Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 235 and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 235 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 235 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. In section 235.072, revise paragraph (b) to read as follows:

235.072 Additional contract clauses.

* * * * *

(b) Use the basic or the alternate of the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Use the basic clause if agency procedures do not authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(2) Use the alternate I clause if agency procedures authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain frequency authorization.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 252.235-7003 by—

- a. Revising the introductory text, clause title and date; and
- b. Revising Alternate I.

252.235-7003 Frequency authorization.

As prescribed in 235.072(b), use one of the following clauses:

Basic. As prescribed at 235.072(b)(1), use the following clause.

FREQUENCY AUTHORIZATION—BASIC (MAR 2014)

* * * * *

Alternate I. As prescribed at 235.072(b)(2), use the following clause, which uses a different paragraph (c) than the basic clause.

FREQUENCY AUTHORIZATION—ALTERNATE I (MAR 2014)

(a) The Contractor shall obtain authorization for radio frequencies required in support of this contract.

(b) For any experimental, developmental, or operational equipment for which the appropriate frequency allocation has not been made, the Contractor shall provide the technical operating characteristics of the proposed electromagnetic radiating device

to the Contracting Officer during the initial planning, experimental, or developmental phase of contract performance.

(c) The Contractor shall use DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(d) The Contractor shall include this clause, including this paragraph (d), in all subcontracts requiring the development, production, construction, testing, or operation of a device for which a radio frequency authorization is required.

(End of clause)

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